IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 19 of 1992

Hon'ble MR.JUSTICE Y.B.BHATT

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INDRAVIJAYSINHJI SURSINHJI

Versus

P N AKRUVALA

Appearance:

MR BN PATEL for Petitioners

RULE SERVED for Respondent No. 1

MRS SIDDHI TALATI, AGP for Respondent No. 2

MR BB NAIK for Respondent No. 3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 24/04/2001

ORAL JUDGEMENT

1. Heard the learned counsel for the respective parties.

2. This is a petition under Article 227 of the Constitution of India, whereby the petitioners being

members of the Managing Committee of a cooperative society have challenged the order of the Gujarat Revenue Tribunal confirming the order and report of the Inquiry officer in an inquiry conducted under section 93 of the Act.

3. The pertinent facts in brief are as under.

3.1 The ex-chairman of the Cooperative Society was a debtor to the society in respect of certain sum of money, which the society experienced difficulty in realising. Before this debt due to the society could be realised, the Ex-Chairman expired. It was therefore decided and worked out by the petitioners viz. the then chairman of the society together with the members of the Managing Committee to negotiate with the heirs of the ex-chairman whereby the heirs would transfer their own personal lands to the society in discharge of the debt. Accordingly this transaction was negotiated and consequently the land was transferred by the heirs to the cooperative society towards the discharge of the debt.

3.2 The consideration shown in the sale deed was that of Rs.52/- per square foot. After the transaction the same was credited against the debit balance of the ex-chairman, whereby the entire amount of the principal amount and only part of the interest component could be satisfied. Consequently part of the interest was written off as a bad debt.

3.3 As a result of the inquiry conducted under section 93 of the Gujarat Cooperative Societies Act, the Inquiry Officer found that the land purchased by the society was overvalued, and that the society had overvalued the same by an amount of Rs.14.30ps per square foot, and that therefore this has resulted in a loss to the cooperative society. Consequently the petitioners were directed to repay the requisite amount alleged to have been an excessive payment to the cooperative society viz. Rs.48748/- and Rs.128955/-.

3.4 This order was challenged by the petitioners by way of an appeal to the Gujarat Cooperative Tribunal, which came to be dismissed. Hence the present petition.

4. This court is conscious of the limitations of this Court while dealing with the petition under Article 227 of the Constitution of India. In the exercise of such jurisdiction this Court cannot enter into questions of fact, cannot enter into the appreciation of evidence and cannot lightly interfere with the finding of fact

recorded. However, certain grounds of challenge such as those raised in the present petition can certainly be looked into even in petitions under Article 227 of the Constitution of India.

5. It was firstly contended that the transaction in question which has been found questionable (not on facts, but on the question of value of the land purchased) has been ratified/approved by the General Body at its Annual General Meeting, and that therefore it could not be said that the transaction conducted by the Managing Committee has resulted in any concrete and substantial loss to the society. It was sought to be contended that the Managing Committee as also the members of the Cooperative Society were aware that the debt was to be recovered from the ex-chairman, and before the same could be realised, the ex-chairman had expired. Thus, even if legal proceedings had been taken against the heirs, it was doubtful whether the debt could be proved in appropriate legal proceedings, and even if proved, whether the fruits thereof would be available to the society within a reasonable time span. Under the circumstances it was submitted that the object of purchase was to make the best of a bad situation whereby the entire principal and at least part of the interest due and recoverable would then be wiped out. It was under these circumstances that the general body had approved of the transaction at its Annual General Meeting. It is urged that this approval granted by the General Body at its Annual General Meeting would absolve the members of the Managing Committee of any individual liability in respect of the transaction.

6. However, it is not necessary to go into this contention in view of the further grounds discussed and decided hereinafter. Suffice it to say that this contention is kept open and may be dealt with by the Tribunal on facts and merits and in accordance with law.

7. The other ground which has been urged and which is more substantial and requires consideration is as regards the violation of the principles of natural justice.

7.1 In this context it is urged that the finding of the Inquiry Officer that the land has been overvalued by an amount of Rs.14.30 per square foot resulting in a loss to the society, is a finding of fact based upon a certificate issued by the Gram Panchayat and other cognate papers and documents. Such a certificate and other documents which have been obtained by the Inquiry Officer from the Gram Panchayat have been referred to and

relied upon in the report of the Inquiry Officer for the purpose of recording a finding that the land has been overvalued. However, the emphatic contention raised in this context is that all such documents were referred to and relied upon behind the back of the petitioners, that they were not informed that such documents are in existence and/or that they would or could be relied upon by the Inquiry Officer, nor were the petitioners given an opportunity of examining the documents in question or offering any explanation and reply thereto.

7.2 It is pertinent to note that this contention was taken before the Tribunal in the memo of appeal and it is stated that the same contention was also argued before the Tribunal. However, this is not reflected in the judgement and order of the Tribunal.

7.3 The consequential submission has also been made in the memo of the present petition in both forms i.e. that the Inquiry Officer relied upon such documents behind the back of the petitioner, and also that this ground was urged before the Tribunal, but has not been dealt with by the latter.

7.4 The respondents are unable to meet this contention firstly because they have failed to file any affidavit in reply to the petition. It would therefore appear that this contention raised by the petitioners cannot be ignored and must be taken at its face value in the absence of any denial whatsoever.

7.5 However, looking to the nature of the contention, and also in view of the fact that when breach of principles of natural justice are alleged, the same results in a mixed question of fact and law, such a mixed question of fact and law cannot be addressed by this court in a petition under Article 227 of the Constitution of India.

8. It is, therefore, just, equitable and in the interests of justice that this case be remanded back to the Tribunal with a direction that this contention should be addressed by it, and that the petitioners be permitted to examine all the documents referred to and relied upon by the Inquiry Officer in his report (including the certificate of the Gram Panchayat and cognate papers). The Tribunal shall then afford an opportunity to the petitioners to offer their explanations/defence in the context of such material as the petitioners may wish to place on record and thereafter the Tribunal shall deal with the same on facts and merits and in accordance with

law, by re-deciding the appeal in question, on all the contentiosn raised in the Appeal.

9. It is accordingly directed that the impugned judgement and order of the Gujarat Cooperative Tribunal in Appeal No.47/91 is quashed and set aside and the matter is remanded back to the Tribunal for re-hearing and a fresh decision on the said appeal as directed hereianbove. It is clarified that the amount of deposit which had been directed by the interim orders of this Court shall remain as a deposit with the Cooperative Society, and that the impugned orders passed by the Inquiry Officer shall not be implemented until the appeal is finally heard and decided.

10. Rule is accordingly made partly absolute with no order as to costs.

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